

1 E. MARTIN ESTRADA  
2 United States Attorney  
3 MACK E. JENKINS  
Assistant United States Attorney  
Chief, Criminal Division  
4 BRETT A. SAGEL (Cal. Bar No. 243918)  
Assistant United States Attorney  
Chief, Corporate & Securities Fraud Strike Force  
United States Courthouse  
5 411 West 4th Street, Suite 8000  
Santa Ana, California 92701  
Telephone: (714) 338-3598  
7 Facsimile: (714) 338-3561  
E-mail: brett.sagel@usdoj.gov

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Attorneys for Plaintiff  
9 UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,

No. SA CR 22-173-CJC

13 Plaintiff,

GOVERNMENT'S RESPONSE TO

14 v.

PRE-SENTENCE REPORT AND

15 VARUN AGGARWAL,

GOVERNMENT'S POSITION RE:

16 Defendant.

SENTENCING FOR DEFENDANT VARUN

AGGARWAL

17 Hearing Date: March 7, 2024

Hearing Time: 11:00 a.m.

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19 Plaintiff United States of America, by and through its counsel  
20 of record, the United States Attorney for the Central District of  
21 California and Assistant United States Attorney Brett A. Sagel,  
22 hereby files its response to the Pre-Sentence Report and its position  
23 regarding sentencing for defendant VARUN AGGARWAL.

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The Government's sentencing position and response is based upon the attached memorandum of points and authorities, the files and records in this case, and such further evidence and argument as the Court may permit.

Dated: February 16, 2024

Respectfully submitted,

E. MARTIN ESTRADA  
United States Attorney

MACK E. JENKINS  
Assistant United States Attorney  
Chief, Criminal Division

/s/

Attorneys for Plaintiff  
UNITED STATES OF AMERICA

1                   **MEMORANDUM OF POINTS AND AUTHORITIES**

2                   **I. INTRODUCTION**

3                   On August 21, 2023, defendant VARUN AGGARWAL ("defendant") pled  
4 guilty to count one of a three-count indictment, charging defendant  
5 with wire fraud, in violation of 18 U.S.C. § 1343. The United States  
6 Probation Office ("USPO") disclosed its Presentence Report ("PSR")  
7 and Recommendation Letter to the parties on February 1, 2024. The  
8 USPO determined defendant's total offense level to be 20, and he is a  
9 criminal history category I, resulting in a range of imprisonment of  
10 33-41 months. The USPO recommends that defendant receive a sentence  
11 of twenty-four months' imprisonment, pay restitution in the amount of  
12 \$2,729,717.91, with an immediate payment of \$600,000, and three years  
13 of supervised release.

14                  The Government has no objections to the factual statements in  
15 the PSR, the sentencing guideline calculation, or the calculation of  
16 criminal history category. For the reasons set forth below, the  
17 Government believes the Court should sentence defendant to a  
18 custodial sentence of twenty-seven months and order defendant to pay  
19 restitution in the amount of \$2,729,717.91.

20                  **II. FACTUAL BACKGROUND**

21                  A. Plea Agreement

22                  Defendant admitted to the following facts pursuant to the  
23 factual basis of his plea agreement:

24                  Defendant VARUN AGGARWAL is a resident of Irvine, California.  
25 From approximately in or about 2008 through in or about January 2022,  
26 defendant worked in the internal auditing department of KBS Realty  
27 Advisors ("KBS"), located in Newport Beach, California. Defendant  
28 rose to the position of Director of Internal Auditing and used the

1 title of Chief Audit, Compliance, and IT Officer. Beginning at least  
2 as early as in or around January 2012, and continuing through in or  
3 around January 2022, in Orange County, within the Central District of  
4 California, and elsewhere, defendant, knowingly and with intent to  
5 defraud, devised, participated in, and executed a scheme to defraud  
6 KBS as to material matters, and to obtain money and property from KBS  
7 by means of material false and fraudulent pretenses, representations,  
8 and promises, and the concealment of material facts.

9 Defendant operated and carried out the fraudulent scheme as  
10 follows. Based on working in KBS's internal auditing department,  
11 defendant used his knowledge of KBS's policies and procedures to have  
12 companies owned by his friends and family members serve as approved  
13 vendors for KBS doing contracting work. The approved vendors owned  
14 and controlled by defendant's friends and family members included,  
15 but were not limited to, the following companies: Total Ethics; Mjam  
16 Studios LLC; Harison & Sons; Jehovah Media, Inc.; and Workforce Now.  
17 After KBS approved these companies as vendors to do legitimate  
18 consulting services, defendant caused the approved vendors to submit  
19 invoices to KBS for consulting services that were not in fact  
20 performed or for an inflated amount so that defendant could receive a  
21 portion of the invoices. In so doing, defendant caused KBS to pay  
22 funds based on the amounts listed on the invoices to the approved  
23 vendors, and then the approved vendors forwarded most of the funds to  
24 defendant. In carrying out this scheme, defendant fraudulently  
25 obtained approximately \$2,729,717.91 from KBS that defendant caused  
26 KBS to pay to the approved vendors that ultimately went to defendant.  
27 On or about the July 9, 2020, within the Central District of  
28 California and elsewhere, for the purpose of executing the scheme to

1 defraud, defendant caused the transmission of the following item by  
2 means of wire and radio communication in interstate and foreign  
3 commerce: defendant deposited into his Chase Bank Account x1408 a  
4 check in the amount of \$20,436 from Mjam Studios LLC through Chase  
5 QuickDeposit that resulted in the electronic settlement of funds  
6 between servers of the bank in multiple states.

7       B. Defendant's Post-Arrest Conduct

8       After being charged in this case, defendant immediately began to  
9 accept responsibility for his conduct and met with the government in  
10 an attempt to cooperate regarding other criminal activity. Defendant  
11 met with Government agents and under a proffer agreement admitted to  
12 his conduct as well as provided information about other potential  
13 criminal conduct of which he was aware. Defendant's statements  
14 appeared truthful and complete, and even corroborated by additional  
15 evidence the government gathered; however, due to attorney-client  
16 privilege issues and other criteria, the government decided not to  
17 pursue any further investigation into the information defendant  
18 provided. Moreover, defendant's early cooperation and plea  
19 agreement, including his willingness to forfeit any claim to seized  
20 property and agreement to an order of forfeiture, also provided  
21 substantial assistance to the Government and saved considerable  
22 resources.

23 **III. SENTENCING RECOMMENDATION**

24       A. The Government's Guideline Calculation

25       The Government submits that the following guideline calculation  
26 applies in the sentencing of defendant:

27       Base Offense Level:                      7                   U.S.S.G. § 2B1.1(a)(1)  
28       Loss greater than \$1.5M:               +16               U.S.S.G. § 2B1.1(b)(1)(I)

1	Abuse of Position of Trust:	+2	U.S.S.G. § 3B1.3
2	Acceptance of Responsibility:	-3	U.S.S.G. § 3E1.1
3	Zero-Point Offender:	-2	U.S.S.G. § 4C1.1
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5	Total Offense Level:	20	
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A criminal history category of I and a total offense level of twenty, yields an advisory sentencing range of 33-41 months' imprisonment. Based on defendant's attempt to cooperate, his early acceptance of responsibility, his agreement to not contest forfeiture of assets seized, and the mitigating factors outlined by the USPO, the government recommends a two-level variance/departure based on a combination of 18 U.S.C. § 3553(e) and U.S.S.G. § 5K1.1. As a result, defendant's advisory sentencing range is 27-33 months imprisonment.

**B. The Government's Recommended Sentence**

The advisory Sentencing Guidelines are the starting point for sentencing. Gall v. United States, 552 U.S. 38, 49 & n.6 (2007). Pursuant to 18 U.S.C. § 3553(a), the court should "impose a sentence sufficient, but not greater than necessary," to comply with the enumerated purposes of sentencing. With the starting point the advisory guideline range of 27-33 months' imprisonment, the government believes based on the nature and circumstances of the offense, the need for the sentence to reflect the seriousness of the offense, to promote respect for the law, to provide just punishment for the offense, and to afford adequate deterrence, a sentence of 27 months, the low-end of the advisory range, is appropriate, just, and not greater than necessary to achieve the goals of sentencing.

1       Although defendant's post-arrest attempts at rehabilitation are  
2 admirable, and the Court can and should consider defendant's various  
3 mitigating factors as detailed by the USPO, a custodial sentence is  
4 necessary to adequately account for defendant's criminal conduct that  
5 spanned a decade, caused losses of over \$2.7 million, and violated  
6 the trust placed in defendant by his employer. Defendant was not  
7 driven to commit his crimes by need, desperation, or the inability to  
8 legitimately earn a living. Despite the advantages defendant enjoyed  
9 -- including a first-rate education and a well-compensated  
10 professional career -- defendant chose to commit the underlying  
11 criminal conduct causing great losses and abusing his position of  
12 trust over a lengthy period of time. A sentence of 27 months'  
13 imprisonment is both reasonable and appropriate in this case, and is  
14 sufficient, but not greater than necessary, to achieve the goals of  
15 18 U.S.C. § 3553(a).

16 **IV. CONCLUSION**

17       The Court should sentence defendant to 27 months' imprisonment,  
18 pay restitution to KBS Realty Advisors in the amount of  
19 \$2,729,717.91, pay a special assessment of \$100, place defendant on  
20 supervised release for three years with the conditions set forth by  
21 the USPO.

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